

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

South Bend, IN

Madison Center, Inc.,

Employer

and

Case 25-RC-10299

International Brotherhood of
Teamsters, Local 364,

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held August 29-31, 2005¹, before a hearing officer of the National Labor Relations Board, hereafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUES

The International Brotherhood of Teamsters, Local 364 (hereafter referred to as the “Petitioner”) seeks an election within a unit comprised of the approximately 125 Mental Health Technicians employed by Madison Center, Inc. (hereafter referred to as the “Employer”) at its Madison Center for Children facility (hereafter referred to as “MC4C”) located at 701 North Niles Avenue, South Bend, Indiana. The Employer contends that the only appropriate unit is a

¹ All dates hereafter are 2005, unless otherwise indicated.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

multi-facility unit which includes all its facilities in Northern Indiana at which Mental Health Technicians are employed.³ The Employer also contends, in the alternative, that at the very least the unit should encompass the Employer's Juvenile Justice Center facility as well as MC4C. Petitioner contends that the single facility is a presumptively appropriate unit and that MC4C has not been so effectively merged with the Employer's other facilities as to destroy its separate identity.

II. DECISION

For the reasons discussed in detail below, including the absence of regular and meaningful contact between the employees of the various facilities, insignificant employee interchange, lack of common supervision, and the geographic distance between the facilities, it is concluded that the Mental Health Technicians (hereafter referred to as "MHTs") employed at the Employer's facility at MC4C located at 701 North Niles Avenue, South Bend, Indiana constitute a unit appropriate for collective bargaining.⁴

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time, part-time and PRN Mental Health Technicians employed by the Employer at its Madison Center for Children facility, located at 701 North Niles Avenue, South Bend, Indiana; BUT EXCLUDING all Program Assistants, professional employees, office clerical employees, and all guards and supervisors as defined in the Act, and all other employees of the Employer.

The unit found appropriate herein consists of approximately 125 employees for whom no history of collective bargaining exists.

III. STATEMENT OF FACTS

The Employer, is an Indiana corporation with a principal place of business in South Bend, Indiana and is engaged in the business of providing mental health services, including hospital (inpatient), residential and day treatment/clinical services.⁵ The Employer has facilities located in South Bend, Michigan City, Kingsford Heights, Valparaiso, Portage, and Fort Wayne, Indiana. The Employer has a multi-building location in South Bend, known as the main campus.

³ This is a total of 15 facilities.

⁴ At hearing, the parties stipulated: "... any unit found appropriate by the Regional Director should include all full-time and part-time mental health technicians and PRN's and exclude all program assistants, professional employees, office clerical employees, and all guards and supervisors, as defined in the Act".

⁵ The parties stipulated on the record that the Employer does not fall under the Board's rules concerning acute care facilities.

The facilities employing MHTs on the main campus are MC4C, Madison Hospital and Riverside Hospital.

In addition to MC4C, Madison Hospital, and Riverside Hospital on the main campus, the Employer also employs MHTs at four other South Bend locations, the Juvenile Justice Center and three group homes. All of the South Bend facilities are located within a fifteen minute drive of the main campus. Madison Center also operates eight regional campuses. The West Region consists of clinics located in LaPorte, Kingsford Heights, Michigan City, Valparaiso, and Portage, Indiana. All of these facilities employ MHTs. The East Region includes clinics in Plymouth, Elkhart, and Fort Wayne, Indiana which also employ MHTs.⁶ There are approximately 147 full-time, part-time and PRN MHTs employed at the above mentioned facilities, excluding MC4C.

The parties entered into a written stipulation which states that the MHTs employed by Madison Center, regardless of their primary location, perform the same basic duties, possess the same basic skills, and are subject to the same personnel policies and practices, which are applied in a substantially similar manner. The stipulation further states that MHTs, depending on the location to which they are assigned, can be assigned to work one of three eight hour shifts which operate 24 hours a day. In addition, all MHTs are invited to attend social and work related outings and events.

Jack Robinson is the President and CEO of Madison Center.⁷ He is responsible for fundraising, financial management and overall operation of the Employer. Reporting to him is Andrea Popielski, Vice-President for Children Services.⁸

MC4C is run by three Directors who report to Popielski. Amy Hartman-Scott is the Director of Children & Adolescent Inpatient Services, Kevin Patton is Director of Children and Adolescent Day Treatment, and Candace Bryant is Director of Children & Adolescent Residential Services.⁹ The Directors supervise Program Coordinators who directly supervise Program Assistants.¹⁰ The Program Assistants are the immediate supervisors of the MHTs. There are 10 full-time, 8 part-time, and 6 PRN MHTs in the Inpatient program. The Day Treatment Program consists of 52 full-time and 1 part-time MHTs. There are 35 full-time, 11 part-time and 2 PRN MHTs in the Residential Program.¹¹

⁶ The distance between the Madison Center Main Campus, where MC4C is located and the other facilities at issue are : LaPorte 28 miles; Kingsford Heights 30 miles; Michigan City 48 miles; Valparaiso 55 miles; Portage 60 miles; Plymouth 28 miles; Elkhart 25 miles; Fort Wayne 80 miles.

⁷ The parties have stipulated that Robinson is a 2(11) supervisor.

⁸ The parties have stipulated that Popielski is a 2(11) supervisor.

⁹ The parties have stipulated that these individuals are all 2(11) supervisors.

¹⁰ The parties have stipulated that Program Coordinators and Program Assistants are 2(11) supervisors.

¹¹ The designation of PRN indicates that these employees work on an on call or as needed basis. This classification will be discussed in detail below.

In most cases, MHTs at the Employer's other facilities are also directly supervised by Program Assistants. In a few situations, the first line supervisors are Coordinators or Nurse Managers. There was evidence that the Directors at MC4C may provide vacation coverage for one another and, on occasion for Directors in other facilities. However, the record fails to reflect any practice of lower level supervisors being assigned to supervise MHTs outside of their designated facility. The parties dispute the level and amount of independence possessed by supervisors in each specific facility. However, the record reflects that MHTs are given their daily work assignments by their immediate supervisors, usually a Program Assistant, and that employee evaluations are performed at the facility level. Approval and scheduling of vacations, personal days and funeral leave are all approved at the facility level. The record further reflects, that the authority to make changes in the employee schedules and determine whether or not an employee absence will be reflected as excused or unexcused, rests at the facility level.

Jill Seifer is the Director of Human Resources at the Employer.¹² Payroll and personnel records for the Employer are maintained in the Human Resources Department and it is responsible for coordination and administration of these programs. System-wide policies and employee work rules, including the Employee Handbook, are also issued from Human Resources and cover all the Employer's facilities. The Human Resources Department is also responsible for the administration of employee wages and benefits. Employees starting salaries are dependent on educational attainment, and are uniform regardless to which facility the MHT is assigned.¹³ Employee evaluations are completed at the facility level and are forwarded to the Human Resources Department for review and placement in the employees' personnel file. These evaluations determine an employee's eligibility for an annual merit increase. There is no evidence that changes to employee evaluations are made by individuals outside the facility. With regard to the hiring of new employees, the interview process, reference checks and hiring decisions are all made at the facility level. These decisions, however, are subject to drug, health and criminal background screenings overseen and conducted by the Human Resources Department.

The Employer maintains and issues one employee handbook for all employees regardless of which facility they are employed. Among the matters covered in the handbook is the issue of reductions in force. The Employer's policy on this subject recognizes the concept of seniority as a factor to be considered in making such decisions and defines the meaning of seniority. According to the handbook, seniority is calculated based upon the employee's service within the employee's division within a facility, not system-wide. The disciplinary policy provides that all disciplinary decisions are made by the employee's supervisor or Program Director. More serious disciplinary actions, including suspension or discharge, require the approval of a higher management official and the participation of the Human Resources Department. There is no evidence, however, that these decisions are not routinely approved. The record contains no documentary evidence of any independent investigations conducted by management above the

¹² The parties have stipulated that Seifer is a 2(11) supervisor.

¹³ There are three classifications of MHTs. An MHT I requires a high school diploma or GED. An MHT II requires college credits or an Associates Degree. An MHT III requires a minimum of a Bachelor's Degree. The pay range for each classification is commensurate with the level of education attained.

facility level. Additionally, the handbook provides for a three step grievance procedure. The first two steps take place at the facility level and allow for supervisors at that level to adjust employee grievances. There is no evidence that such adjustments require any discussion with, or approval from, the Human Resources Department or from a higher level of management. Finally, the handbook does not address the issue of temporary or permanent transfers or any policies regarding such transfers.

There are multiple job descriptions for MHTs, depending on the facility or program to which they are assigned. Each job description designates the division in which the position is located, the location of the facility, the supervisor and normal working hours. A review of the job descriptions introduced into evidence, demonstrates that they are not identical in either responsibility or job functions. The documents reflect that those MHTs employed in a hospital setting possess considerable responsibility when compared to those employed at Regional Clinics. Additionally, there are differences in responsibilities between MHTs in the same facilities and among programs. For example, MHTs at MC4C in Adolescent Day Treatment program have a one page job description, while those in the Residential Program have a three page job description. The Residential job description includes, among other things, the performance of nursing procedures and a requirement that employees be at least 21 years old. There is no such requirement for the MHTs in the Adolescent Day Treatment program, nor many of the Employer's other facilities. Additionally, the MHT job descriptions for those employed in group homes have significantly different responsibilities from those of MHTs employed at other facilities. This is because they are small home-based facilities.

All MHTs receive similar training, including new employee orientation, mental health training, and restraint training. These training sessions may include MHTs from more than one of the Employer's facilities. Beginning in March, 2004 the Employer implemented a Mental Health Technician Academy. The Academy is attended by all MHTs with the exception of those at the Fort Wayne facility and is presented at the Madison Center South Bend campus every other month.¹⁴ The Academy presents training on issues such as charting, behavior management, and communications. Upon completion of the Academy each participant is given a certificate and receives a 3% pay increase. Successful completion is a requirement for continued employment.

The record reflects that there have been occasional permanent transfers between facilities by MHTs. The Employer introduced evidence which purports to show permanent transfers involving 29 different employees during the period of August, 2000 to May, 2005. However, a closer review of the document reveals that two of these transfers were involuntary and initiated by the Employer. Further, ten of the transfers involved MHTs moving from one department in MC4C to another and another ten either involved employees outside the MHT classification or it was not clear what classification the employee held either before or after the transfer. The evidence therefore, demonstrates approximately 8 voluntary MHT transfers between facilities in the preceding five years. Other witnesses testified about transfers involving MHTs in the East

¹⁴ The record reflects that the Fort Wayne MHTs are not included in this training because of their distance from the main campus.

and West regions, however, the Employer failed to submit any records to substantiate this testimony. The Employer admits that it does not routinely post openings for MHTs system-wide.

The record also contains testimony regarding MHTs periodically working shifts in facilities other than the one to which they are regularly assigned. The evidence revealed that this most often happened during periods of high census in a facility and MHTs from another facility were asked to volunteer to cover staffing shortages. Most often such arrangements lasted from a few hours to a maximum of a couple of weeks. Typically, however, such coverage lasted no more than a day or two. Occasionally, employees volunteer to work overtime in other facilities to earn additional pay. While opportunities for overtime in MC4C appear to be regularly posted in that building, it does not appear that such opportunities are regularly extended to MHTs assigned to other facilities. Indeed, MHT Don Quick testified that he learned of such opportunities by contacting the schedulers in other facilities and notifying them of his willingness to pick up extra hours. As verification of its claim that opportunities to work additional hours were available to MHTs in facilities other than that to which they are regularly assigned, the Employer submitted the punch reports for four employees. These reports reflect that three of the employees worked in facilities other than the one to which they were regularly assigned during the period of November 1, 2004 to August 31. During that period Tom Kane, who was normally assigned to the Elkhart facility, worked 36.5 hours at Madison Hospital. Don Quick, who was normally assigned to MC4C worked 52.5 hours at Madison Hospital. Juan Carlos Kennedy, who was normally assigned to MC4C, worked 4 hours at Madison Hospital and 12.25 hours at Riverside Hospital.¹⁵ During the period October 16, 2004 to August 31, Jacques Baker who normally worked in MC4C, worked 39 hours in Madison Hospital.

The record reflects some interaction between the MHTs at MC4C and other facilities. MHTs from MC4C participate in meetings and trainings with MHTs from other facilities. A few times a year, the Employer hosts outings and activities for patients at other facilities. The patients are transported to these activities by MHTs, who may also participate in the activities along with the patients. Finally, Madison Center organizes system-wide social events, such as holiday parties and staff picnics. Employees from all the facilities are invited to attend. Such attendance, however, is not mandatory. There is additional evidence of interaction between those MHTs at MC4C and at the Employer's Juvenile Justice Center (hereafter referred to as "JJC"). Both MC4C and JJC serve adolescents, therefore some of the services provided for JJC patients are performed at MC4C. Patients are transported from JJC to MC4C by MHTs. These MHTs often wait for these patients during their treatment for up to two to two and one-half hours. There is no evidence that these MHTs participate or assist in the care of MC4C patients during these time periods or that MC4C MHTs assist in the care of JJC patients. These sessions take place once or twice a week.

¹⁵ Juan Carlos Kennedy is currently classified as a Program Assistant.

IV. ANALYSIS

A. The Single Facility Issue

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act," NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit, American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

In the instant case, the Petitioner seeks to represent only one of the Employer's facilities. On the other hand, the Employer argues that a unit which includes all of its facilities where MHTs are employed is appropriate. In the alternative, the Employer argues that MC4C and JJC share a special relationship which makes a unit comprised of the MHTs of those two facilities appropriate. In Catholic Healthcare West, et. al., 344 NLRB No. 93 (Slip Op. at 1, June 1, 2005) the Board upheld the Regional Director's decision and reaffirmed the traditional single-facility unit presumption: "It is well established that a single-facility unit in the health care industry is presumptively appropriate." The Board went on to state: "As the party opposing the single-facility unit, the Employer has the heavy burden of overcoming the presumption. [cites omitted] In order to rebut the presumption, the Employer must demonstrate integration so substantial as to negate the separate identity of the single facility."

In support of its position for a multiple facility unit the Employer maintains that its operations are highly centralized in terms of hiring, wages, benefits, and policies. However, the record reflects that the individual facilities maintain substantial autonomy in their operations. The supervisors in each facility maintain the ability to hire, discipline, evaluate, schedule, and adjust the grievances of the employees assigned to that facility. The MC4C management structure provides that MHTs are supervised by Program Assistants, who are supervised by Program Coordinators, who are supervised by Directors. These multiple levels of supervision are situated at the facility level. These facts differ from the cases cited by the Employer, where local management had little or no authority to act outside the constraints of the established procedure and/or where they lacked the authority to make any significant decisions without the approval of centralized management. *See* Globe Furniture Rentals, Inc., 298 NLRB 288 (1990), (Board found that store managers lacked the ability to promote, fire, discipline, or even reject unqualified applicants without the specific approval of the Vice-President).

In O'Brien Memorial, Inc., 308 NLRB 553, 553-554 (1992), the Board, citing Manor Health Care Corp., 285 NLRB 224 (1987), upheld the Regional Director's finding that the single-facility presumption had not been rebutted: "... even where several facilities are physically close together, and operated under administrative centralization with uniform policies for all employees, this would not suffice to refute the single facility unit presumption in the health care field." Further, in Gerry Homes d/b/a Heritage Park Health Care Center, 324 NLRB 447 (1997) the Board held that a single-facility unit was appropriate and stated that to overcome this presumption: "there must [be] substantial evidence of regular contact and interchange between

the employees of different facilities for a Petitioner's desire for a single-facility unit to be rejected." The record evidence in this case, fails to show significant amounts of interchange or contact between the employees of the various facilities. At hearing, the Employer presented documentation of fewer than thirty MHT permanent transfers between facilities in the past five years. However, upon closer evaluation, the evidence reflects that the actual number of permanent transfers is only about a third of the number originally alleged. Additionally, the Employer admits that MHT positions are not posted outside of the facility in which they occur. This requires that an employee wishing to learn of an openings at another facility, contact each of the Employer's 15 facilities individually. Such requirement, by its nature, limits the ability of MHTs to engage in substantial interchange.

The Employer argues that there is sufficient evidence of temporary transfers between facilities to rebut the single-facility presumption. The record evidence reflects that such temporary transfers are relatively rare and only take place in extraordinary circumstance. Such circumstances would include situations such as, power outages or an unusually high patient census. Only one witness testified that he had actually sought extra hours in a facility other than the one to which he was regularly assigned. Most witnesses testified that they were unaware when such opportunities arose and only worked in other facilities when actually solicited to do so by their supervisors. The only documentary evidence of employees having worked shifts in another facility involves just four employees during a nine month period. To rebut the single-facility presumption, evidence of interchange must be significant when compared to the actual workforce involved. The facts in this case are in sharp contrast to those cited by the Employer, where there was significantly more verifiable evidence of interchange and contact between the employees in the facilities which the Employer sought to have included in the unit.

In New Britain Transportation, 330 NLRB 397, 398 (1999), the Board found that even 200 instances of temporary interchange, during a five month period, was insufficient to rebut the single facility presumption. The Board found that such numbers lacked context. "The presumption has not been rebutted where an employer's interchange data is represented in an aggregate form rather than as a percentage of total employees." The Board went on to hold: "Even if it were possible to put the Employer's asserted number of temporary transfers in context, we find that significant temporary employee interchange has not been established and does not approach the degree of interchange typically present in cases where the Board has found it to be significant." Here, the Employer seeks a multiple facility unit which would encompass approximately 272 MHTs, however, the record reflects little evidence of actual interchange.

The substantial geographic separation between the facilities (from 28 to 80 miles) also militates against the multi-facility unit urged by the Employer. See Cargill, Inc., 336 NLRB 1114 (2001). Similarly the absence of any collective-bargaining history in the multi-facility employer unit also disfavors the broader unit.

The Board has found that the single-facility presumption may be rebutted by weighing, in addition to the usual community-of-interest factors, evidence that the finding of a single facility unit as appropriate will threaten harm to the public and continuity of patient care. Catholic Healthcare West, 344 NLRB No. 93 (June 1, 2005); Manor Health Care Corp., 285 NLRB 224 (1987). The Employer in this case argues that JJC and the other facilities rely on service

provided by MC4C to such an extent that should a labor dispute arise there is an increase risk of work disruption or adverse impact on patient care if a single facility unit is deemed appropriate. In support of this position, the Employer relies on West Jersey Health System, 293 NLRB 749 (1989). In West Jersey Health System, the Board found that multi-facility unit was the only appropriate unit and that a labor disruption at the petitioned for single facility unit could adversely affect patient healthcare. The Board relied on the fact that certain equipment and personnel running such equipment was only available in some facilities and all hot food served to patients was centrally prepared. This case is distinguishable from the instant case inasmuch as record fails to reflect evidence that the facilities share, such important services as food services or laboratory facilities, which a work stoppage would interrupt.¹⁶ While the record reflects that some JJC patients receive therapy at MC4C and patients from JJC and the Employer's other clinics may receive acute care at MC4C, the record evidence does not indicate that such services could not be provided elsewhere. Nor does the record indicate that joint outings between MC4C and other facilities could not continue in the absence of MC4C personnel.

Additionally, in finding a multi-facility unit the only appropriate unit in West Jersey Health System, the Board relied on additional factors which are not present in the instant case. In contrast to the instant case, there was evidence of significant permanent transfers and steady temporary interchange among the facilities. In fact, job openings were posted on a system-wide basis and there was no preference for employees in the division where the opening existed. Further, unlike the facts in the instant case, the day-to-day operation of the system was not handled by the division administrators, but by the departmental directors who had responsibility for more than one division, traveling between the divisions on a regular, frequent basis. West Jersey Health System, *Supra*. Such factors of permanent transfers, steady temporary interchange and centralized day-to-day management are not present in the instant case.

In the alternative, the Employer argues that if the Regional Director fails to find that a system-wide unit is the only appropriate unit, the MHTs at MC4C and JJC, share a community of interest such that, these two facilities comprise the only appropriate unit. Among the reasons the Employer gives for this position are geographic proximity, occasional common supervision, and interchange. The record evidence fails to reflect that the relationship between MC4C and JJC is any stronger than those of other facilities. This is particularly clear upon reviewing the records involving MHTs working in facilities other than the one to which they are regularly assigned. These records fail to demonstrate any instances of MC4C MHTs working in JJC or vice versa. The Employer has failed to support its claims of substantial interchange between the two facilities, with other than unsubstantiated anecdotal evidence.

Jeff Burnett, Program Director for JJC, provided testimony that JJC was a department with MC4C.¹⁷ Burnett's testimony, however, is inconsistent with the record evidence. The job descriptions submitted by the Employer reflect that JJC MHTs have separate and distinct job

¹⁶ The record specifically reflects that each facility has its own cafeteria or access to other food service facilities.

¹⁷ The parties have stipulated that Burnett is a 2(11) supervisor.

descriptions from those at MC4C and that they do not share the same BU codes.¹⁸ Additionally, in a document entered into evidence by the Employer, JJC employees are listed under a separate heading, in the same manner as those from MC4C, Riverside Hospital, Madison Hospital, and the Regional Clinics.¹⁹ While the Directors of MC4C and JJC report to the same Vice-President, there is no evidence that she has significant input or control over the day to day operations or management of the facilities.

Further, the Employer argues that geographic proximity militates toward a finding of a community of interest between the JJC and MC4C. In AVI Foodsystems, Inc., 328 NLRB 426 (1999), the Board found a single-facility unit appropriate even where two of the employer's facilities were located less than a mile apart. The Board in reaching this conclusion looked to the amount of autonomy retained by each facility and the lack of significant employee interchange.

Finally, while there is evidence that Directors at the two facilities have occasionally provided vacation coverage for one another, the record does not reflect with what frequency this occurs. Further, there is no evidence of supervisory exchange involving those lower levels of day to day supervision, to whom the MHTs report directly.

Accordingly, it is concluded that because of a lack of functional integration and interchange, including the amount of autonomy demonstrated by MC4C in the areas of hiring, discipline, scheduling, and evaluation of the MHTs assigned to that facility and minimal evidence of either permanent or temporary transfers of MHTs between facilities, the Employer has failed to rebut the single facility presumption, by proving by a preponderance of record evidence that MC4C has been so integrated with its other facilities as to destroy its separate identity. Therefore the petitioned for unit, all MHTs employed at MC4C is found to be appropriate.

B. PRN Employees

The Employer employs a number of on-call MHTs, to work in its various facilities, these employees are hired directly and do not come through an employment or leasing agency. These employees, who are called PRN, are not eligible for benefits. The parties agree that PRN MHTs, who share a community of interest with those working full-time and part-time, should be included in any unit found appropriate.²⁰

¹⁸ The record does not reflect the meaning or purpose of this code, however, the document reflecting these codes was entered into evidence by the Employer.

¹⁹ Seifer testified that this document was prepared by the Employer's Human Resources Department.

²⁰ The parties stipulated on the record that: "PRNs are entitled to vote, in the [representation] election, dependent upon whether or not they have worked sufficient hours, under applicable Case Law."

The record reflects that there have been eight PRN MHTs employed at MC4C during the period February 15 to August 15.²¹ This is a period of approximately 26 weeks or 2 quarters. The first quarter covers the period of February 16 to May 15 and the second quarter encompasses the period of May 16 to August 15. Two of these employees were employed during both the first and second quarters. The remaining employees did not commence their employment until the second quarter. A review of the records reveals that during the quarter immediately preceding the filing of the petition eight PRN employees worked at MC4C. The total quarterly hours for those employees ranged from a high of 458.25 to a low of 116.5. The records also reflect that each of these employees worked at least some hours during each pay period since they were hired.

In Saratoga County Chapter NYSAR, Inc., 314 NLRB 609 (1994), the Board stated: “In determining whether on-call employees who perform work should be included in the bargaining unit, the Board considers the regularity of their employment. Employees are considered to be regularly employed when they have worked a substantial number of hours within the period of employment prior to the eligibility date.” The Board has held that, absent special circumstances, an on-call employee has sufficient regularity of employment if the employee averages four or more hours of work per week for the last quarter prior to the eligibility date.” Davison-Paxon Co., 185 NLRB 21 (1970). In cases where there is significant disparity in the number of hours worked by such on-call employees, the Board has employed an eligibility formula which required employees to have worked a minimum of 120 hours in either of the two quarters immediately preceding the eligibility date. Marquette General Hospital, Inc., 218 NLRB 713 (1975). (the employer’s on-call nurses worked such disparate hours from as many as 540.5 hours per quarter to as few as 23 hours per quarter)

In this case, the record evidence demonstrates that there is no significant disparities in the hours worked by the PRN MHTs in question. While there are a few PRN MHTs who worked a higher number of hours such as 458.25, 440.5 and 280, the majority of the employees worked between 125 and 116 hours. Accordingly, it is concluded that the Davison-Paxon eligibility formula applies. Saratoga County, 314 NLRB 609; S.S. Joachim and Anne Residence, 314 NLRB 1191 (1994). It is further concluded that the Employer’s PRN MHTs employed at MC4C are eligible to vote if they regularly average 4 hours or more of work per week during the quarter prior to the eligibility date.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In

²¹ Records entered into evidence reflect that these employees are paid bi-monthly.

addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Teamsters, Local 364.

VI. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before October 4, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by October 11, 2005.

DATED AT Indianapolis, Indiana, this 27th day of September, 2005.

/s/ Rik Lineback
Rik Lineback
Regional Director
National Labor Relations Board
Region 25
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RL/bjb/jcm

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